Supreme Court, U.S.
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No. 99-176

In the Supreme Court of the United States

MULK RAJ DASS, PETITIONER

v.

JOHN B.Z. CAPLINGER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING DENIAL OF THE PETITION

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QUESTIONS PRESENTED

1. Whether 28 U.S.C. 1915A (Supp. III 1997) applies to complaints where the plaintiff pays the filing fee in full.

2. Whether the lower courts properly applied Louisiana's one-year general personal-injury tort statute of limitations to plaintiff's *Bivens* action.

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INTEREST OF THE UNITED STATES

Pursuant to its authority under 28 U.S.C. 1915A (Supp. III 1997), the district court dismissed this action prior to service of process against the defendants. Accordingly, the individual defendants have not been parties to the proceedings below, and they do not appear as respondents here.

The United States is filing this brief as *amicus curiae* to support the dismissal of petitioner's complaint and the denial of the petition for certiorari. Petitioner's dismissed complaint names as defendants employees of the United States. Thus, the United States has an interest in this case as the employer and representative of the potential defendants, and as the employer of

many persons named as defendants in suits filed by prisoners and governed by Section 1915A. The United States has a strong interest in protecting government employees from meritless and unduly burdensome litigation that may interfere with their exercise of lawful discretion in their official functions and deter qualified individuals from public service.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is unpublished, but the decision is noted at 170 F.3d 183 (Table). The opinion of the district court (Pet. App. 14a-15a) and the report and recommendation of the magistrate judge (Pet. App. 4a-13a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 29, 1999. A petition for rehearing was denied on February 24, 1999 (Pet. App. 16a). The petition for a writ of certiorari was filed on April 21, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In May 1990, petitioner entered the United States under a nonimmigrant visa. Pet. 4. In September 1992, he was convicted in the United States District Court for the District of New Jersey on federal fraud charges. Pet. App. 7a. Petitioner was sentenced to 21 months' imprisonment and three years' supervised release. *Ibid.*[1]

In November 1993, while petitioner was serving his sentence for the September 1992 conviction, the Immi-

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[1] Petitioner's supervised release was later revoked and he was sentenced to an additional nine months' imprisonment. Pet. 5.

gration and Naturalization Service (INS) ordered him deported. Pet. App. 7a. Petitioner appealed the deportation order to the Board of Immigration Appeals and then to the Fifth Circuit. The Fifth Circuit denied and dismissed his petition for review on August 8, 1995. *Ibid.*

Meanwhile, on March 9, 1995, petitioner completed his criminal sentence on the September 1992 conviction. Pet. App. 8a. Petitioner claims that the INS district director, John Caplinger, promised that if the Fifth Circuit did not issue a decision on the deportation appeal by the end of April, and if petitioner could post a $30,000 bond, he would release petitioner from detention. *Ibid.* Petitioner alleges that Caplinger failed to follow through with that promise. *Ibid.*

2. On April 26, 1995, petitioner was transferred to Oklahoma, where a warrant had been issued for his arrest. Pet. 6; Pet. App. 8a. On December 18, 1995, petitioner was convicted in the United States District Court for the Northern District of Oklahoma of one count of conspiracy and four counts of wire fraud. Pet. App. 9a; *United States* v. *Kalyvas*, No. 96-5176, 1997 WL 651761, at *1 (10th Cir. Oct. 21, 1997) (127 F.3d 1110 (Table)), cert. denied, 118 S. Ct. 726 (1998). After a remand for re-sentencing, petitioner was sentenced to 37 months' imprisonment.[2] Pet. App. 9a.

3. On October 1, 1997, while serving his sentence for the December 1995 conviction, petitioner filed a civil

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[2] According to the Bureau of Prisons' records, petitioner was held pursuant to his 37-month criminal sentence until December 17, 1997. He was thereafter held in custody pending deportation. On March 30, 1999, petitioner pled guilty to federal charges of conspiracy to commit wire fraud and wire fraud. Currently, he is being held in federal custody in Brooklyn, New York, pending sentencing.

complaint in the United States District Court for the Western District of Louisiana against Caplinger and former acting INS Director Chris Sale alleging violations of his constitutional rights (under the Fifth, Sixth, Eighth and Fourteenth Amendments) and seeking monetary damages.[3] Pet. App. 4a-5a, 9a-10a. Petitioner paid the filing fee in full. *Id.* at 6a.

Before authorizing service of the complaint, the district court dismissed the complaint with prejudice under 28 U.S.C. 1915A. Pet. App. 14a-15a. The district court adopted the report and recommendation of a magistrate judge and held that, taking the allegations as true, petitioner failed to show that his constitutional rights were violated. *Id.* at 11a. The court also noted that any claim relating to the legality of petitioner's incarceration in Oklahoma was barred under *Heck* v. *Humphrey*, 512 U.S. 477 (1994), because the underlying conviction had not been overturned and could not be collaterally attacked. Pet. App. 9a-10a. As to petitioner's claims that were not directed to the legality of his confinement in Oklahoma, the court found that the claims were untimely under the applicable one-year limitations period. *Id.* at 11a-12a.

4. Petitioner appealed to the Fifth Circuit. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. 1a-3a.

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[3] Petitioner characterizes his claims as "filed under 42 U.S.C. 1983." Pet. 3. Because petitioner is seeking monetary damages against individual federal officials, however, his claims are best understood as claims authorized by *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Accordingly, we refer to petitioner's claims as *Bivens* claims.

ARGUMENT

The unpublished decision of the court of appeals is correct and does not conflict with the decision of any court of appeals or any decision of this Court. Petitioner's claims are time-barred and were properly dismissed pursuant to 28 U.S.C. 1915A (Supp. III 1997). The petition for a writ of certiorari should therefore be denied.

1. Petitioner contends that the district court erred in dismissing his complaint pursuant to 28 U.S.C. 1915A. Pet. 11-15. Under Section 1915A, a district court must screen prisoners' civil complaints against government officials or entities before docketing or as soon as practicable, and must dismiss the complaints if they are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. Petitioner contends that Section 1915A does not apply to this case, however, because he paid his filing fee in full. *Ibid.*

Contrary to petitioner's argument, the language of the statute does not distinguish between prisoners who proceed in forma pauperis and those who pay the filing fee in full. Indeed, every court of appeals that has examined Section 1915A has held that the statute applies to all complaints filed by prisoners seeking redress from a government entity or government official, regardless of whether the plaintiff paid the filing fee. See *Carr* v. *Dvorin*, 171 F.3d 115, 116 (2d Cir. 1999) (collecting cases). Accordingly, the district court's screening of petitioner's case under Section 1915A was correct, is

fully consistent with the decisions of the courts of appeals, and does not merit review by this Court.[4]

2. Petitioner also argues that the court of appeals misapplied *Heck* v. *Humphrey*, 512 U.S. 477 (1994). Pet. 26-29. Under the rule announced in *Heck*, a prisoner may not bring a civil rights suit when a favorable outcome of the suit would necessarily undermine the prisoner's conviction. Petitioner argues that, because his claims do not implicate the validity of his criminal conviction, *Heck* should not apply. Pet. 28-29.

The court of appeals *agreed* with petitioner and, accordingly, held that petitioners' *Bivens* claims were not barred by *Heck*. Pet. App. 2a-3a. Further review by this Court is not warranted.

3. While agreeing with petitioner that his claims were not barred by *Heck*, the court of appeals dismissed petitioner's claims nonetheless because it found that his claims were time-barred. Pet. App. 3a. The court of appeals properly applied a one-year limitations period to petitioner's *Bivens* claims. Under *Wilson* v. *Garcia*, 471 U.S. 261 (1985), and *Owens* v. *Okure*, 488 U.S. 235 (1989), in adjudicating the timeliness of federal civil rights claims, a federal court is to borrow the applicable State's general statute of limitations for personal injury torts. See, *e.g.*, *Peña* v. *United States*, 157 F.3d 984, 987 (5th Cir. 1998) (applying Texas general statute of limitations in *Bivens* action). Here, the applicable limitations period is Louisiana's one-year limitations

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[4] Although petitioner is seeking damages based on an allegedly invalid detention by INS, and not based on his custody on criminal charges, he was nevertheless a prisoner subject to 28 U.S.C. 1915A when he filed his complaint because he was then serving his sentence for his December 1995 conviction. Pet. App. 4a-5a.

period applicable to personal injury torts, La. Civ. Code Ann. art. 3492 (West 1999).[5] See *Jacobsen* v. *Osborne*, 133 F.3d 315, 319 (5th Cir. 1998); *Hawkins* v. *McHugh*, 46 F.3d 10, 12 (5th Cir. 1995).[6]

Petitioner complains that Caplinger violated his constitutional rights by failing to follow through with his alleged March 1995 promise to release petitioner on a $30,000 bond. Pet. 6, 9. Petitioner alleges that, as a result of Caplinger's action, he was unconstitutionally detained in the Tulsa County Jail prior to his December 1995 conviction. Pet. 7-8. As the court of appeals noted, the conduct underlying petitioner's civil rights claims occurred between March and December 1995. Pet. App. 3a. Petitioner did not file his civil rights complaint until October 1, 1997, and his claims are therefore time-barred.[7]

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[5] The ten-year limitations period cited by petitioner (Pet. 15) is the state statute for personal non-tort actions and does not apply to this case.

[6] Although these cases involve actions under 42 U.S.C. 1983 (1994 & Supp. III 1997), every court of appeals that has considered the issue has concluded that the statute of limitations for claims brought under Section 1983 applies also to *Bivens* claims. See *Sanchez* v. *United States*, 49 F.3d 1329, 1330 (8th Cir. 1995); *Kurinsky* v. *United States*, 33 F.3d 594, 599 (6th Cir. 1994), cert. denied, 514 U.S. 1082 (1995); *Industrial Constructors Corp.* v. *United States Bureau of Reclamation*, 15 F.3d 963, 968-969 (10th Cir. 1994); *Van Strum* v. *Lawn*, 940 F.2d 406, 410 (9th Cir. 1991); *Bieneman* v. *City of Chicago*, 864 F.2d 463, 469-470 (7th Cir. 1988), cert. denied, 490 U.S. 1080 (1989); *Chin* v. *Bowen*, 833 F.2d 21, 23-24 (2d Cir. 1987).

[7] Petitioner argues that he did not become "aware of his constitutional violations" until August or September 1997, and that a tolling provision should therefore apply to his claims. Pet. 23-24. That fact-bound contention was not passed on by the courts below and does not merit this Court's review. See *Capital Cities Cable*,

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Inc. v. *Crisp*, 467 U.S. 691, 697 (1984) (stating that Supreme Court "do[es] not ordinarily consider questions not specifically passed upon by the lower court").